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**TESTIMONY OF
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U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE**

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Mr. Chairman, members of the Committee, I appreciate the opportunity to appear before you today and to testify on H.R. 5254, the "Refinery Permit Process Schedule Act." I am pleased to be here representing the Environmental Protection Agency. My testimony will address EPA's statutory responsibilities affecting refinery construction and expansion, some of the Agency's ongoing efforts to streamline the refinery permitting process, and the legislation being considered by the Committee.

It is self-evident that domestic refineries are a vital part of the nation's energy infrastructure and a powerful contributor to the U.S. economy. As last year's hurricanes demonstrate, however, the nation needs to expand and diversify its modern refining capacity. Following Hurricanes Katrina and Rita, about a quarter of our nation's refinery capacity was shut down for a period of several days, and even today, parts of our nation's production and refining infrastructure are still being restored. The entire country felt the impact of the hurricanes on retail gas prices. There were short-term shortages of fuel. Some facilities received millions of dollars in damage. Although we have largely been able to recover from these exceptional natural disasters, the need remains to think strategically about our long-term refining needs. One component of our approach should be investigating ways to streamline the process for permitting construction of new refineries and expansion of existing facilities.

The issue of domestic refinery construction, overall capacity and the refinery permitting process is hardly new. Conditions in 2006, however, are different from those faced in earlier years, as global demand for refined oil products has grown as a result of increases in both

domestic and international demand. Many refineries are also operating at such high capacity levels that additional disruptions could lead to a rapid impact on consumer and industrial access to affordable energy. New refining capacity would help alleviate the strain on our current fuel system. While overall refinery capacity has increased through facility modifications, as the Committee well knows, no new refinery has been constructed in the United States in over 30 years.

As indicated above, domestic refining capacity has increased through steady expansion of operations at existing refineries, even as smaller, less efficient refineries have closed. Today, there are 149 refineries compared with 205 refineries in 1990. Total capacity over this same period of time, however, has increased from 16.5 million barrels per day to 17.3 million barrels per day.

Refinery Permitting

Because most permits are issued by state and local authorities, EPA does not routinely track permitting activities for refineries and cannot provide precise numbers concerning such activity. However, based on information we currently have in technology clearinghouses and a recent survey of refinery activities, we estimate that approximately 100 permits have been issued to refineries since 2000. Many of these permits involved upgrades in order to comply with new EPA regulations such as those requiring new sulfur limits for gasoline and diesel -- approximately 60 of the permit applications in 2000-2003 involved projects to comply with Tier 2 gasoline requirements. Many of the projects, however, also added to increased capacity, whether or not the project was initiated or primarily designed to meet new fuel standards.

A broad scope of environmental issues may be present in siting a new facility or expanding the capacity of an existing one. Such an action may trigger requirements or permitting actions under authority of the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the National Environmental Policy Act and other federal, state and local environmental laws. Substantial "up front" work is also required regarding site and

design factors prior to the submission of an application for a new refinery. In addition, the various approval processes usually are not coordinated, and often do not occur at the same time, which adds to the overall time. While many refinery permits can and have been issued in a matter of months, depending on the complexity of the refinery and the issues involved in siting, the permitting process can take between one and two years *after* a complete application is filed. Not all of this time is consumed due to requirements imposed by EPA or the states -- those seeking to construct refineries may revise their applications after they have been submitted engendering some additional delays in the permitting process. However, it is also apparent that administrative appeals during the permitting process and judicial review of permitting decisions can add substantially to the time before construction or expansion can begin.

States may also impose separate or additional requirements on refineries that can be more stringent than those required for compliance with federal law and regulations. Apart from the requirements of federal environmental law, state and local decision-making with respect to refineries and other large industrial and commercial facilities can frequently involve land use and other local issues, such as conditional use permits, local fire, building and plumbing codes, connections to sewer systems and construction approvals. Thorough and appropriate review of these matters obviously can add to the complexity of the permitting process and has the potential to involve further commitments of time on the part of the applicant, relevant approval bodies and stakeholders.

Clean Air Act

Currently, a number of Clean Air Act permitting requirements apply to construction of a new refinery or major expansion of an existing refinery, though most of these provisions are delegated to the States and therefore implemented at the State level. For example, a New Source Review (NSR) permit must be obtained before construction starts. States typically take 12-18 months to issue NSR permits for large facilities, although this time period can vary significantly and does not include the additional time needed if an administrative appeal is filed. Depending on the location of a refinery, the 12-18 month NSR permitting process may include obtaining

emission “offsets” based on the facility’s emissions.

A Title V “operating permit” is also required for a refinery that constitutes a major source. This program was added to the Clean Air Act in the 1990 amendments to consolidate in a single document all federal and state regulations applicable to the source, but the program does not create any new substantive requirements. Once it submits a complete application, the facility can operate under an “application shield” while the Title V permit is being processed. States must take final action on the permit application within 18 months. If the permit applicant or an interested stakeholder disagrees with the permit terms or conditions, they may file an administrative appeal or petition. This adds additional time to the process, although the facility can continue to operate during the appeals process.

Applicants for a new refinery would also need to comply with other Clean Air Act regulations including New Source Performance Standards, emission standards for hazardous air pollutants and Compliance Assurance Monitoring Requirements. New Source Performance Standards, or NSPS, set a minimum level of control for new or modified sources of air pollution, and various process units within a refinery, including sulfur recovery units, fuel gas combustion devices, or catalyst regenerators, are subject to such standards. Another set of regulations requires petroleum refineries, which are sources of toxic air pollutants, to meet emission standards reflecting application of the maximum achievable control technology, or MACT, for a given source. Overall, air emissions from refineries have declined in recent decades.

It should be mentioned at this juncture that while EPA has taken steps intended to help streamline the permitting process for refineries and other industrial sectors, certain legislative measures would have a more significant and beneficial effect in the long run. The President’s Clear Skies cap and trade approach to reducing air emissions from electric generating utilities would give our states a powerful, efficient and proven tool for meeting health-based air quality standards for fine particles and ozone.

EPA has projected that Clear Skies, in conjunction with Bush Administration rules

cutting diesel engine pollution by more than 90 percent and other Clean Air Act programs, would bring most of the more than 500 nonattainment counties into attainment with the new standards without having to take any new local measures beyond Clear Skies. Thus, to the extent Clear Skies provided for attainment of Clean Air Act health-based standards, states and local governments would have a lighter burden in putting together their local control strategies to attain the National Ambient Air Quality Standards (NAAQS). This could result in an increased ability at the state and local level to accommodate new or expanded manufacturing or refining activities within plans to meet the NAAQS.

Clean Water Act

Refineries, like other facilities, are required to obtain a National Pollutant Discharge Elimination System (NPDES) permit if they discharge pollutants from a point source into waters of the U.S. Similar to our Clean Air Act programs, EPA has authorized states to issue NPDES permits with a few exceptions. The state programs closely mirror the federal program, but some have additional requirements such as public notice and comment periods or technical requirements that go beyond the federal requirements. The federal program provides a number of permitting flexibilities.

Last year, EPA finalized the pretreatment streamlining rule, which amends certain provisions of the General Pretreatment Regulations regarding oversight of industrial users that discharge to Publicly Owned Treatment Works (POTWs). The pretreatment streamlining rule will reduce the regulatory burden on both indirect industrial dischargers as well as POTW Control Authorities without adversely affecting environmental protection. It will also allow POTW Control Authorities to better focus oversight resources on industrial users with the greatest potential for affecting POTW operations or the environment. The reduction in regulatory burden is applicable to both existing industrial users and to any new Industrial Users, including any new refineries which choose to discharge pollutants to a POTW, rather than directly to surface waters via a NPDES permit. One change to the regulations specifically benefits refineries and organic chemical manufacturers. POTWs are allowed to use

concentration-based standards rather than calculate mass limits based on a facility's wastewater discharge. This revision will make it easier for POTWs to implement the standards and for facilities to monitor their own performance.

The changes EPA recently adopted also provide another type of flexibility to POTWs by authorizing them to use general permits instead of an individual permit in certain circumstances. General permits cover multiple facilities within a specific category. This type of permit provides a cost-effective option for POTWs and permitting agencies because of the large number of facilities that can be covered under a single permit. For example, a large number of facilities that have certain elements in common may be covered under a general permit without expending the time and money necessary to issue an individual permit to each of these facilities. In addition, using a general permit ensures consistency of permit conditions for specific facilities.

Resource Conservation and Recovery Act

Refineries and other regulated entities that generate hazardous waste are subject to waste accumulation, manifesting, and record-keeping standards. Facilities that treat, store, or dispose of hazardous waste must obtain a permit either from EPA or, more likely, from a state agency that EPA has authorized to implement the permitting program. States may have more stringent requirements than the federal Resource Conservation and Recovery Act (RCRA) program.

It has been the EPA's experience that more recent petroleum refineries generally are designed to only store materials in secure containers and tanks for less than 90 days, so that they are most often classified as generators only, and thus are not subject to RCRA permitting. However, a few petroleum refineries do have RCRA permits and in circumstances where a refinery expansion results in a change in hazardous waste management, a permit modification may be required. The modification process depends on the significance of the modification and obtaining a permit can take 1-2 years, depending on complexity. A temporary authorization (to start constructing the changes while awaiting the modification approval) may be allowable in certain circumstances.

The Agency has already taken steps to streamline the RCRA permitting process. Specifically, in September of last year, EPA issued the RCRA standardized permit rule, which allows certain waste facilities to submit an abbreviated permit application. These newly streamlined permitting requirements result in a shorter permitting time line and shorter time lines for any subsequent permit modifications. It is estimated that the standardized permitting process will save the states and industry more than three million dollars a year.

H.R. 5254, the “Refinery Permit Process Schedule Act

The Refinery Permit Process Schedule Act sets forth a number of provisions intended to coordinate and expedite the refinery permitting process. Section 2 of the legislation, the definitional section, helps to define the scope of the law. The bill defines a “federal refinery authorization” to include any authorization required under Federal law relating to the siting, construction, expansion, or operation of a refinery and includes all permits, licenses, and other relevant official approvals. “Refineries” are defined to include facilities involved in the production, storage, and transportation of crude oil, coal, and biomass to the extent they are used to make gasoline, diesel, or biofuel.

Section 3 of the bill authorizes the EPA Administrator, upon the request of a Governor, to provide financial assistance to hire personnel with technical, legal, or other expertise relating to the permitting process under a federal refinery authorization. The section also provides that upon a governor’s request, a federal official with responsibility for such processes shall assist the State with its consideration of the refinery authorization.

Section 4 of H.R. 5254 requires the appointment of a “Federal coordinator” who is then made responsible to carry out certain duties associated with refinery permitting. First, the Federal Coordinator – at the request of a party seeking approval of a refinery -- is required to convene a meeting of relevant federal and state agencies responsible for permitting or otherwise approving

the refinery project¹. Second, the Federal coordinator, with the participants at the meeting, is to establish a Memorandum of Agreement (MOU) setting forth the “most expeditious coordinated schedule possible” for completing refinery authorizations. Third, if a state or federal agency is not represented at the coordination meeting, the Federal coordinator is to ensure that the MOU schedule accommodates the necessary Federal authorizations. Fourth, the Federal coordinator is to ensure that all parties carry out the MOU in “good faith.” Finally, the Federal coordinator is required to undertake certain administrative duties to include publishing the MOU in the Federal Register and maintaining a consolidated record of all decisions.

Section 4 also authorizes the refinery applicant or a party to the MOU to bring a civil action in federal district court if a federal or state agency fails to act on a Federal refinery authorization in accordance with the schedule in the MOU where that failure would jeopardize timely completion of the entire schedule. If, after reviewing the actions of the parties, the Court finds such a failure, the section provides that the Court may establish a new schedule for completion of the permitting process, “consistent with the full substantive and procedural review required by Federal law.” The bill requires expedited review of any such civil action.

Section 5 of the bill instructs the President to designate at least 3 military installations as potentially suitable for construction of a refinery, and requires that at least one of the sites be specifically designated for development of a refinery that processes biomass into biofuel. Section 6 of the legislation provides that nothing within H.R. 5254, if enacted, affects the application of any environmental statute or other law or bars the commencement of litigation under any environmental statute or other law. Section 7 provides that H.R. 5254 serves to repeal the refinery revitalization subtitle approved as part of the Energy Policy Act of 2005.

Conclusion

The Administration supports House passage of H.R. 5254. As part of his four-part plan to confront high gasoline prices, the President has called on Congress to simplify and speed up the permitting process for refinery construction and expansion. H.R. 5254 includes measures to

¹ Federal and state officials are required to cooperate with the Federal coordinator, however, section 4 (b)(2) contemplates the possibility that not all such officials may participate in the coordination meeting.

simplify and expedite the refinery permitting process while maintaining strong environmental standards, although the Administration notes that the bill does not include codification of New Source Review rules that would enable accelerated investments in efficiency at refineries. The Administration encourages Congress to continue moving forward on refinery legislation, and EPA stands ready to assist the Committee and its Members in its review.